

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No.: 18-3033 (DSD/LIB)

David Earl Wattleton,

Petitioner,

v.

ORDER

David Paul, Warden,
Federal Medical Center Rochester,

Respondent.

This matter is before the court upon the objection by pro se petitioner David Earl Wattleton to the November 29, 2018, report and recommendation of Magistrate Judge Leo I. Brisbois (R&R). The court reviews the R&R de novo. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3); D. Minn. LR 72.2(b).

The background of this case is fully set forth in the R&R, and the court will not repeat it here. Wattleton objects to the magistrate judge's recommendation that his habeas petition under 28 U.S.C. § 2255 be denied because: (1) under Eighth Circuit precedent, relief under § 2255 is not available to a petitioner, such as Wattleton, challenging a not-guilty-by-reason-of-insanity verdict; and (2) Wattleton has already unsuccessfully brought a § 2255 petition in the Northern District of Georgia. Wattleton argues that the magistrate judge erred because he neither sought nor received an insanity verdict. Wattleton was, however, in fact, found not guilty by reason of insanity. See United States v. Wattleton, No.1:99-CR-306-TWT, 2003 WL 27380898, at *1 (N.D. Ga.

Jan. 9 2003). The Eighth Circuit has held that a petitioner "found not guilty by reason of insanity ... is not eligible for relief" under § 2255. Archuleta v. Hedrick, 365 F.3d 644, 648 (8th Cir. 2004). After a thorough review of the file and record, the court finds that the R&R is well-reasoned and correct and that the objection lacks merit.

Accordingly, based on the above, **IT IS HEREBY ORDERED** that:

1. The objection [ECF No. 8] to the R&R is overruled;
2. The R&R [ECF No. 7] is adopted in its entirety;
3. The application for a writ of habeas corpus [ECF No. 1] is denied;
4. The application to proceed in forma pauperis [ECF No. 2] is denied;
5. The motion to amend [ECF No. 4] is denied without prejudice;
6. The motion to expedite [ECF No. 5] is denied as moot; and
7. This case is dismissed without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 27, 2018

s/David S. Doty
David S. Doty, Judge
United States District Court